The Criminal Law Review

1991

LONDON
Sweet and Maxwell
1991

AUSTRALIA AND NEW ZEALAND
The Law Book Company Ltd.
Sydney : Brisbane : Melbourne : Perth

CANADA
The Carswell Company Ltd.
Agincourt, Ontario

INDIA
N. M. Tripathi Private Ltd.
Bombay
and
Eastern Law House Private Ltd.
Calcutta and Delhi
M.P.P. House
Bangalore
and
Universal Book Traders
New Delhi

ISRAEL
Steimatzky's Agency Ltd.
Jerusalem : Tel Aviv : Haifa

PAKISTAN
Pakistan Law House
Karachi

Editorial Board

Andrew Ashworth, Editor
LL.B., B.C.L., PH.D.
Edmund-Davies Professor of Criminal Law and Criminal Justice, King's College, University of London

DI BIRCH, Cases Editor, LL.B.
Reader in the Law of Evidence, University of Nottingham

JOHN BALDWIN, B.SOC.SC., DIP.CRIM., PH.D.
Director, Institute of Judicial Administration, University of Birmingham

D. W. ELLIOTT, LL.B.
Solicitor, Professor of Law, University of Newcastle-upon-Tyne

BRIAN HOGAN, LL.B.
Barrister, Professor of Law, University of Leeds

IAN OLIVER, Q.P.M., LL.B., M.PHIL., PH.D.
Chief Constable

A. T. H. SMITH, LL.M., PH.D.
Barrister and Solicitor of the High Court of New Zealand, fellow of Gonville and Caius College, Cambridge

J. R. SPENCER, LL.B., M.A.
Reader in Common Law, University of Cambridge

CELIA WELLS, Book Review Editor, LL.M.
Lecturer in Law, University College, Cardiff

ROBERT CHRONNELL, LL.B.
Chief Crown Prosecutor, North London

E. GRIEW, M.A., LL.B.
Barrister, Emeritus Professor of Law, University of Nottingham

SIR DAVID NAPLEY
Solicitor, Past President of the Council of the Law Society

ALEC SAMUELS, J.P., B.A. (Cantab.)
Barrister

J. C. SMITH, C.B.E., Q.C., LL.D., F.B.A.
Emeritus Professor of Law, University of Nottingham

D. A. THOMAS, LL.D.
Reader in Criminal Justice, University of Cambridge

Printed in Great Britain by the Eastern Press Ltd. of Reading

ISBN 0 421 44610 2

This work may not be photocopied or
otherwise reproduced within the terms of any licence
granted by the Copyright Licensing Society Ltd.
No part of this publication may be reproduced or
transmitted, in any form or by any means electronic,
mechanical, photocopying, recording or otherwise, or
stored in any retrieval system of any nature, without the
written permission of the publisher

©
Sweet & Maxwell Limited and Contributors
1991

Table of Contents

Articles

ALTERNATIVE DEFENCES: THE "INVISIBLE BURDEN" ON THE TRIAL JUDGE. By *Sean Doran* 878

BASKERVILLE REVISITED: THE DEFINITION OF CORROBORATION RECONSIDERED. By *Simon Bronitt* 30

BODILY SAMPLES AND THE PRIVILEGE AGAINST SELF-INCRIMINATION. By *Susan M. Easton* 18

CONFESSIONS AND CORROBORATION: A COMPARATIVE PERSPECTIVE. By *Andrew L.-T. Choo* 867

CONTRADICTING PREVIOUS ACQUITTALS. By *Michael Hirst* 510

CORPORATE LIABILITY AND MANSLAUGHTER: SHOULD WE BE GOING DUTCH? By *Stewart Field* and *Nico Jörg* 156

CURTAILING THE RIGHT OF SILENCE: LESSONS FROM NORTHERN IRELAND. By *J. D. Jackson* 404

CUT THROAT TACTICS: THE FREEDOM OF AN ACCUSED TO PREJUDICE A CO-ACCUSED. By *D. W. Elliot* 5

DIRECTORS' THEFTS AND DISHONESTY. By *D. W. Elliot* 732

DISCUSSIONS IN THE JUDGE'S PRIVATE ROOM. By *Patrick Curran* . . . 79

DIVERSION OF MENTALLY DISORDERED OFFENDERS FROM CUSTODY. By *Phil Fennell* 323

ENGLISH DNA EVIDENCE HELD INADMISSIBLE. By *Neil McLeod* . . . 583

EXCLUDING EXPERT EVIDENCE: A TALE OF ORDINARY FOLK AND COMMON EXPERIENCE. By *R. D. Mackay* and *Andrew M. Colman* . . . 800

FROM NORMATIVE TO POSITIVE DATA: EXPERT PSYCHOLOGICAL EVIDENCE RE-EXAMINED. By *David H. Sheldon* and *Malcolm MacLeod* 811

HOSTILE WITNESSES AND THE ADMISSION OF WITNESS STATEMENTS UNDER SECTION 23 OF THE CRIMINAL JUSTICE ACT 1988. By *Roderick Munday* . . 349

INSANITY DEFENCES AND MAGISTRATES' COURTS. By *Stephen White* . . . 501

INSTANT LIE DETECTION? DEMEANOUR AND CREDIBILITY IN CRIMINAL TRIALS. By *Marcus Stone* 821

JUDICIAL REVIEW OF CRIMINAL PROCEEDINGS. By *J. N. Spencer* 259

MISCARRIAGES OF JUSTICE AND JUDICIAL RESPONSIBILITY. By *A. A. S. Zuckerman* 492

MISCARRIAGES OF JUSTICE AND THE ACCESSIBILITY OF THE COURT OF APPEAL. By *Kate Malleson* 323

NAME SUPPRESSION: AN ADJUNCT TO THE PRESUMPTION OF INNOCENCE AND TO MITIGATION OF SENTENCE—1. By *Roderick Munday* 680

NAME SUPPRESSION: AN ADJUNCT TO THE PRESUMPTION OF INNOCENCE AND TO MITIGATION OF SENTENCE—2. By *Roderick Munday* 753

POLICE CAUTIONING AND THE YOUNG OFFENDER. By *Roger Evans* . . . 598

PROSECUTING WAR CRIMINALS IN ENGLAND AND IN FRANCE. By *Eva Steiner* 180

PROXIMITY IN ATTEMPT: LORD LANE'S "MIDWAY COURSE". By *K. J. M. Smith* 576

RECKLESS AND INCONSIDERATE RAPE. By *Simon Gardner* 172

STORKWAIN: A CASE STUDY IN STRICT LIABILITY AND SELF-REGULATION. By *Bernard S. Jackson* 892

SUMMARISING TAPE RECORDINGS OF POLICE INTERVIEWS. By *John Baldwin* and *Julie Bedward* 671

THE APPROPRIATE APPROPRIATION. By *Andrew Halpin* 426

THE DECLINE OF DISABILITY IN RELATION TO THE TRIAL. By *R. D. Mackay* . 87
THE EFFECTS OF HOME OFFICE GUIDELINES ON THE CAUTIONING OF OFFENDERS. By *David Westwood* 591
THE LAMP THAT SHOWS THAT FREEDOM LIVES—IS IT WORTH THE CANDLE? *By Penny Darbyshire* 740
THE NEUTRAL EXPERT: A PLAUSIBLE THREAT TO JUSTICE. By *M. N. Howard* . 98
THE NEUTRAL EXPERT: AN IMPLAUSIBLE BOGEY. By *J. R. Spencer* . . 106
THE NEW LAW OF ABORTION: CLARIFICATION OR AMBIGUITY? By *Andrew Grubb* 659
THE QUESTIONING CODE REVAMPED. By *David Wolchover* and *Anthony Heaton-Armstrong* 232
WHAT THE ANNUAL STATISTICS TELL US ABOUT PLEAS AND ACQUITTALS. By *Michael Zander* 252
WRONG TURNINGS ON THE LAW OF ATTEMPT. By *Glanville Williams* . . 416

Letters to the Editor

Co-accused's use of an Inadmissible Confession 396
Criminal Complicity 930
Directors' Thefts and Dishonesty 929
Expert Witnesses 395, 569
Sentencing Provisions of the Criminal Justice Bill 225
The New Law of Abortion 931

Book Reviews

DUFF, R. A.: Intention, Agency and Criminal Liability 399
FISSE, B.: Howard's Criminal Law 571
GELSTHORPE, LORAINE and MORRIS, ALISON (eds.): Feminist Perspectives in Criminology 398
HOF, LEE ANN: Battered Women as Survivors 398
JEFFERSON, TONY: The Case Against Paramilitary Policing 935
LACEY, NICOLA, WELLS, CELIA and MEURE, DIRK: Reconstructing Criminal Law: Text and Materials 315
ROOK, PETER and WARD, ROBERT: Sexual Offences 570
SPENCER, J. B. and FLIN, RHONA: The Evidence of Children 655
SPENCER, J. R., NICHOLSON, G., FLIN, R. and BULL, R.: Children's Evidence in Legal Proceedings: An International Perspective . . 655
WRIGHT, MARTIN: Justice for Victims and Offenders 796
YEO, STANLEY M. H.: Compulsion in the Criminal Law 151

Contributors of Articles

BALDWIN, JOHN and BEDWARD, JULIE: Summarising Tape Recordings of Police Interviews 671
BRONITT, SIMON: Baskerville Revisited: the definition of Corroboration reconsidered 30
CHOO, ANDREW L.-T.: Confessions and Corroboration: a comparative perspective 867
CURRAN, PATRICK: Discussions in The Judge's Private Room 79

TABLE OF CONTENTS

DARBYSHIRE, PENNY: The Lamp That Shows That Freedom Lives—is it worth the candle? 740

DORAN, SEAN: Alternative Defences: the "invisible burden" on the trial judge 878

EASTON, SUSAN: Bodily Samples and the Privilege Against Self-Incrimination 18

ELLIOT, D. W.: Cut Throat Tactics: the freedom of an accused to prejudice a co-accused 5

ELLIOT, D. W.: Directors' Thefts and Dishonesty 732

EVANS, ROGER: Police Cautioning and the Young Offender 598

FENNELL, PHIL: Diversion of Mentally Disordered Offenders from Custody 323

FIELD, STEWART and JÖRG, NICO: Corporate Liability and Manslaughter: should we be going Dutch? 156

GARDNER, SIMON: Reckless and Inconsiderate Rape 172

GRUBB, ANDREW: The New Law of Abortion: clarification or ambiguity? . 659

HALPIN, ANDREW: The Appropriate Appropriation 426

HIRST, MICHAEL: Contradicting Previous Acquittals 510

HOWARD, M. N.: The Neutral Expert: a plausible threat to justice . . 98

JACKSON, BERNARD S.: *Storkwain*: A Case Study in Strict Liability and Self-Regulation 892

JACKSON, J. D.: Curtailing the Right of Silence: lessons from Northern Ireland 404

MACKAY, R. D.: The Decline of Disability in Relation to the Trial . . 87

MACKAY, R. D. and COLMAN, ANDREW M.: Excluding Expert Evidence: a tale of ordinary folk and common experience 800

MCLEOD, NEIL: English DNA Evidence Held Inadmissible 583

MALLESON, KATE: Miscarriages of Justice and the Accessibility of the Court of Appeal 323

MUNDAY, RODERICK: Hostile Witnesses and the Admission of Witness Statements under Section 23 of the Criminal Justice Act 1988 . . 349

MUNDAY, RODERICK: Name Suppression: an adjunct to the presumption of innocence and to mitigation of sentence—1 680

MUNDAY, RODERICK: Name Suppression: an adjunct to the presumption of innocence and to mitigation of sentence—2 753

SHELDON, DAVID H. and MACLEOD, MALCOLM: From Normative to Positive Data: expert psychological evidence re-examined . . . 811

SMITH, K. J. M.: Proximity in Attempt: Lord Lane's "midway course" . 576

SPENCER, J. N.: Judicial Review of Criminal Proceedings 259

SPENCER, J. R.: The Neutral Expert: an implausible bogey 106

STEINER, EVA: Prosecuting War Criminals in England and in France . . 180

STONE, MARCUS: Instant Lie Detection? Demeanour and Credibility in Criminal Trials 821

WESTWOOD, DAVID: The Effects of Home Office Guidelines on the Cautioning of Offenders 591

WHITE, STEPHEN: Insanity Defences and Magistrates' Courts 501

WILLIAMS, GLANVILLE: Wrong Turnings on the Law of Attempt 416

WOLCHOVER, DAVID and HEATON-ARMSTRONG, ANTHONY: The Questioning Code Revamped 232

ZANDER, MICHAEL: What the Annual Statistics tell us about Pleas and Acquittals 252

ZUCKERMAN, A. A. S.: Miscarriages of Justice and Judicial Responsibility . 492

Current Topics

DNA Evidence—Beyond Reasonable Doubt? By Simon J. Young . . 264
Do Children Forget Faster? By Rhona Flin and J. R. Spencer . . . 189
Provocation and Mercy Killing. By Paul R. Taylor 111
What is an Allegation of Rape? By Stephen White 689